

MEMORANDUM OF LAW

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DATE: August 10, 1989

TO: Larry Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Payment of Group Health Insurance for Retirees

A former City of San Diego employee who retired prior to October 6, 1980, has asked the Retirement Board of Administration if it would be possible for the City Employees' Retirement System (CERS) to pay his medical insurance on his behalf in order for the insurance to be paid with pre-taxed dollars. In order to fund this benefit, the employee has suggested that the Board adopt a rule whereby his retirement benefits would be reduced by the amount of the medical insurance payment. You have asked this office to review this suggestion.

At the present time, employees who are otherwise qualified under San Diego Municipal Code section 24.0907.2 and who retired after October 6, 1980, are entitled to participate in a City sponsored group health insurance program which is funded first from surplus undistributed earnings pursuant to San Diego Municipal Code section 24.0907.1 and in the event that sufficient funds are not available from the surplus undistributed earnings, the premiums are paid from the general fund. This procedure is authorized by Internal Revenue Code section 401(h) which permits a pension plan to provide for the payment of medical insurance for retired employees if the plan meets certain requirements with respect to such benefits. The Code states that the benefits must be subordinate to the retirement benefits provided by the plan, and a separate account must be established to which the employer makes reasonable and attributable contributions (apart from contributions to the retirement account) which are used to satisfy the plan's obligation to pay for the medical insurance. The contributions must revert to the employer (rather than funding retirement benefits under the plan) after the plan's obligation is satisfied. There are other requirements which must be met but they are not at issue at this point.

After reviewing the Code and the Department of Treasury Regulations, it does not appear that there is any authorization in the Code permitting a reduction of an employee's retirement benefits in order to pay for medical insurance. At the present time, the only way to pay for medical insurance for retirees with pre-tax dollars is pursuant to section 401(h) of the Code.

The entire issue of funding retiree health obligations is currently being discussed in Congress by both the Joint Committee on Taxation and by the House Ways and Means Committee. There is an ongoing battle over the conflict between national health policy and the deficit reduction policy. If changes are made in the Code concerning this issue, we will notify you of the impact on The City of San Diego's ability to pay for medical insurance for retirees.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Chief Deputy City Attorney

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